

# Annual Rating Conference 2019

## Reliefs

By David Nicholls

## Local Government Finance Act 1988: relief

- Charities and registered clubs – occupied: s.43(5) & (6) – 80%
- Charities and registered clubs – unoccupied: s.45A – 100%
- Qualifying general stores, food stores, and post offices in rural settlement: s.43(6A) – (6E) – 50%
- Qualifying former agricultural land and buildings: s.43(6F) – (6H)
- Partly occupied hereditaments: s.44A
- Discretionary: institutions (s.47); hardship (s.49)

## Relief (2)

S.51 & Sch. 5 contain exemptions covering:

- Agricultural premises
- Fish farms
- Place of religious worship
- Certain property of Trinity House
- Sewers
- Property of drainage authorities
- Parks
- Property used for the disabled
- Air-raid protection works
- Etc etc

## Reliefs (3): Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008

100% relief where:

- Unoccupied for up to 3 months (or 6 months if industrial)
- Owner is prohibited by law from occupying it or allowing it to be occupied
- Listed building or scheduled monument
- Owner is a company in liquidation or administration
- Owner is a personal representative or bankrupt

- Domestic if “*wholly for the purposes of living accommodation*”: s.66(1)
- If domestic, no liability
- 9-storey office building
- Occupied by 40 – 50 ‘property guardians’
- Was the property being used wholly for the purposes of living accommodation?

## *Ludgate House (2)*

No:

- Contract stated main purpose was to secure and protect the building
- Thus, living there – but with a security function
- Living accommodation was a means to achieve the security purpose
- Large parts of the building locked and out of bounds
- Occupiers had no right to possession
- Owners remained in control

## *Rossendale BC v Hurstwood Properties* [2019] EWCA Civ 364

- Owners let properties to SPVs
- Non-trading SPVs went into liquidation
- Reg. 4(k)

Should the leases or SPVs be disregarded so that the owners are liable?

No:

- Leases were not shams
- No basis for piercing the corporate veil
- No scope for a wider, purposive interpretation of the Act

## Mandatory relief for charities

- Ratepayer must be a charity (or its trustees)
  - Registration with Charity Commission is conclusive (s.37 of Charities Act 2011)
- Charity must be a rateable occupier:
  - Actual occupation
  - Exclusive for the particular purpose of the occupier
  - Possession must be of some value or benefit
  - Possession must not be for too transient a period (*Laing v Kingswood* [1949] 1 KB 344)



## Mandatory relief for charities (2)

- Occupied premises must be wholly or mainly used for charitable purposes:  
s.43
- Unoccupied premises must appear 'when next in use' to be wholly or mainly used for charitable purposes: s.45A

## Guidance for trustees

Trustees must:

- Be assured that the tenancy is in the best interests of the charity
- Ensure the property is genuinely required and fit for purpose
- Consider the potential rates liability exposure
- Ensure the charity is not being abused for commercial gain
- Take professional advice

## Wholly or mainly used for charitable purposes

- Question is whether the premises are used for charitable purposes
- Not essential for every part of the property to be used
- Activities need not be charitable but must be consistent with charitable objects
- Irrelevant if space could be used more efficiently
- Immaterial if motive is rate mitigation
- Broad-brush approach / fact dependent

# *My Community Space v Ipswich BC* [2018] EWHC 3313 (Admin)

Exhibition use:

- Prior appointment necessary
- Very few members of the public visited
- No signs or promotional material
- No one present
- Floors empty except for posters on easels
- Not always informative with limited details

Held: not wholly or mainly used for charitable object of encouraging volunteering